Word Music, LLC et al v. Priddis Music, Inc. et al
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EXECUTION COPY

PURCHASE AGREEMENT

among

HILL & RANGE SONGS, INC.

CHAPPELL & CO., INC.

POLYGRAM GmbH

and

POLYGRAM B.V.

Dated: As of July 1, 1975

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
ATTORNEYS AND COUNSELLORS AT LAW
345 PARK AVENUE, NEW YORK, N.Y. 10022

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EXHIBITS:

A Form of Bill of Sale

B Form of Short-Form Assignment of ASCAP Compositions

C Form of Short-Form Assignment of BMI Compositions

D Form of Instrument of Assumption

E Form of Irrevocable Letter of Instruction to BMI

F Form of Irrevocable Letter of Instruction to ASCAP

G Form of Irrevocable Letter of Instruction to the Fox Agency

H Form of Assignment of Presley Management Agreement

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PURCHASE AGREEMENT

PURCHASE AGREEMENT dated as of July 1, 1975, among HILL & RANGE SONGS, INC., a New York corporation (the "Seller"), CHAPPELL & CO., INC., a Delaware corporation (the "Buyer"), POLYGRAM GMBH, a Federal Republic of Germany Gesellschaft mit beschraenkter Haftung, and POLYGRAM B.V., a Netherlands Besloten Vennootschap (said Polygram GmbH and Polygram B.V. being sometimes herein referred to, jointly and severally, as the "Guarantor").

WHEREAS, the Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller, all of the Seller's right, title, interest and benefit in and to certain rights now owned or possessed by the Seller or to be acquired by the Seller pursuant to certain mergers and described in Section 2.1 hereof, all upon the terms and conditions hereinafter set forth; and

WHEREAS, the Guarantor agrees to execute the guarantee hereinafter provided for;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. Merger of the Merging Corporations into the Seller. Within five days prior to the closing provided for in Section 5 hereof (the "Closing"), Anne-Rachel Music Corp., Noma Music, Inc. and Dolfi Music, Inc., each a New York corporation (collectively,

the "Merging Corporations"), shall be merged into the Seller pursuant to the laws of the State of New York.

2. Sale of Rights.

2.1 Rights to be Sold. Except as otherwise provided in Section 2.2 hereof, at the Closing the Seller shall sell, assign, transfer, convey, grant and deliver to the Buyer in perpetuity and throughout the entire world:

(i) all of the Seller's and the Merging Corporations' right, title, interest and benefit in and to each and every musical composition in and to which the Seller and the Merging Corporations have any right, title, interest and benefit as of the Closing Date (collectively, the "Compositions"), whether as the sole or partial owner or beneficiary of the copyrights thereof, the renewals or extensions of copyrights thereof, or as a participant in any manner in the proceeds of the exploitation thereof, and whether their rights are vested, contingent or reversionary, including but not limited to all of the Seller's and the Merging Corporations' right, title, interest and benefit in and to each Composition listed in Schedule I delivered to the Buyer and all of their right, title, interest and benefit in any and all benefits which may affix to the Compositions under any copyright law now in force and effect and which may hereafter be enacted or come into force and effect;

(ii) all of the Seller's right, title, interest and benefit of whatsoever kind and nature in and under or covered by each and every contract and agreement relating to the Compositions insofar as such contracts and agreements relate to the Compositions, including but not limited to all of such right, title, interest and benefit in all mechanical rights, synchronization rights, broadcasting rights, television rights, film rights, small performing rights, grand performing rights, printing and publication rights, exclusive administration rights, foreign rights of whatsoever kind and nature, audio-visual rights and rights for all uses in all media whether now in existence or later to come into existence and in all royalties and other payments with respect thereto (as hereinafter limited and defined) and the right to collect the same; and including but not limited to all of such right, title, interest and benefit in and under or covered by the contracts and agreements listed in Schedule II delivered to the Buyer; and

(iii) all of the Seller's right, title, interest and benefit of whatsoever kind and nature in and under a certain Agreement dated September 15, 1972 (the "Presley Management Agreement"), by and among Joachim Jean Aberbach and Julian J. Aberbach (collectively, the "Aberbachs"), the Seller and Elvis Presley.

All of the foregoing right, title, interest and benefit referred to in clauses (i) and (ii) of this Section 2.1 are sometimes referred to herein as the "Rights." At the Closing the Seller shall deliver to the Buyer an executed Bill of Sale in the form of Exhibit A annexed hereto with respect to the Rights and Compositions, and executed short-form assignments in the forms of Exhibits B and C annexed hereto respecting those Compositions licensed by the American Society of Composers, Authors and Publishers ("ASCAP") and those Compositions licensed by Broadcast Music, Inc. ("BMI"), respectively, which are included in the approximately 5000 Compositions listed in Schedule I. The Seller shall also deliver at the Closing to the Buyer or an assignee of the Buyer permitted under Section 14.3 hereof an executed assignment of all of its and the Merging Corporations' agreements with BMI.

2.2 Rights Not to be Sold. Anything in Section 2.1 hereof to the contrary notwithstanding, there shall be excluded from the Rights sold hereunder (i) any right, title, interest or benefit of the Seller or the Merging Corporations in or to any Composition listed in Schedule III(1), (2), (3) and (4) delivered to the Buyer (the Compositions listed in Schedule III(5) to be subject to Section 11.8 hereof); and (ii) any right, title, interest or benefit in amounts not to be included in Publisher's Receipts (as defined in Section 4.5 hereof).

3. Assumption of Liabilities.

3.1 Liabilities to be Assumed. Subject to the obligation of the Seller to indemnify the Buyer to the extent provided in Sections 12 and 13 hereof, the Buyer shall assume at the Closing Date (as hereinafter defined) (i) all liabilities and obligations of the Seller relating to the Rights and use and exploitation thereof, except as expressly provided in Section 3.2 hereof, and (ii) all liabilities and obligations of the

Seller under the Presley Management Agreement. The Buyer shall execute and deliver to the Seller at the Closing an Instrument of Assumption in the form of Exhibit D annexed hereto.

3.2 Liabilities Not to be Assumed. Anything in this Agreement to the contrary notwithstanding, the Buyer shall not assume any liability or obligation for any amount payable to third parties with respect to use or exploitation of the Rights prior to July 1, 1975, under any contract or agreement to which the Seller or any of the Merging Corporations is a party, or with respect to use or exploitation prior to July 1, 1975, of the compositions which are the subject of the Presley Management Agreement, except for amounts payable to such third parties from, or out of, amounts included in Gross Receipts (as defined in Section 4.5 hereof) pursuant to the provisions of this Agreement.

4. Purchase Price and Payments.

4.1 Purchase Price. In consideration of the sale hereunder of the Rights, the Buyer shall pay to the Seller a purchase price consisting of 67.5% of the Publisher's Receipts (as defined in Section 4.5 hereof) until the aggregate amount paid by the Buyer to the Seller pursuant to this Section 4.1 shall equal the Base Amount (as hereinafter defined).

4.2 Determination of Base Amount. As used in this Agreement, the term "Base Amount" means the sum of (i) $8,400,000, plus (ii) 2% of $8,400,000, plus (iii) 2% of the amount by which $8,400,000 exceeds the amount of all payments made by the Buyer to the Seller pursuant to Section 4.1 hereof on or prior to January 15, 1976, plus (iv) 2% of the amount by which $8,400,000 exceeds the amount of all payments made by the Buyer to the Seller pursuant to Section 4.1 hereof on or prior to July 15, 1976, plus (v) 2% of the amount by which $8,400,000 exceeds the amount of all payments made by the Buyer to the Seller pursuant to Section 4.1 hereof on or prior to January 15, 1977.

4.3 Interest on Purchase Price. Commencing with and respecting the semi-annual payment due on or before 60 days following December 31, 1977, pursuant to Section 4.4.2 hereof, the Buyer shall, for so long as the Buyer is required to make any such semi-annual payments to the Seller pursuant to Section 4.1 hereof (except as hereafter provided in this Section 4.3), pay as interest to the Seller simultaneously with each such semi-annual payment made pursuant to Section 4.4.2 hereof, an amount equal to 2% of the amount obtained by subtracting (i) the cumulative total amount of all payments made by the Buyer to the Seller pursuant to Section 4.1 hereof with respect to all periods ended on or prior to 15 days following the last day of the semi-annual period ended in June or December which immediately precedes the period with respect to which the payment pursuant to Section 4.4.2 is then being made, from (ii) the Base Amount. In no event shall such payments of interest continue after the semi-annual payment due on or before 60 days following June 30, 1987.

4.4 Payment of Purchase Price.

4.4.1 Estimated Quarterly Payments. On or before 15 days following each quarterly period ended on the last day of March, June, September and December in each year, the Buyer shall remit to the Seller all amounts estimated by the Buyer as required to be paid to the Seller pursuant to Sections 4.1 and 11.9 hereof with respect to Publisher's Receipts for such quarterly period. At the same time, Buyer shall pay to the Aberbachs, and, if requested by Seller, the other parties entitled to receive payments thereunder, all amounts estimated by the Buyer to be payable to such parties with respect to receipts for such quarterly period covered by the Presley Management Agreement. In no event shall any estimated payment to be made pursuant to this Section 4.4.1 with respect to any quarter ended on the last day of March or September in any year be less than the payment which would be due if the Publisher's Receipts for such period were 25% of Publisher's Receipts for the preceding semi-annual period. If the Buyer should be delayed for any reason in completion of its estimate for any such period, payment of such minimum amount shall be made on the due date and supplemented by any additional payment required when the Buyer's estimate is complete.

4.4.2 Semi-Annual Statements and Payments. On or before 60 days following each semi-annual period ended on the last day of June and December in each year, the Buyer shall furnish to the Seller a statement of Gross Receipts (as hereinafter defined) for such semi-annual period and shall remit to the Seller with such statement all amounts required to be paid by the Buyer to the Seller pursuant to Sections 4.1 and 11.9 hereof with respect to Publisher's Receipts for such semi-annual period. Such statement shall set forth the amount and type of income included in Gross Receipts, the period covered and the amount and type of income paid or accrued as payable, whether as royalties or otherwise, to third parties from such Gross Receipts, and shall be in such detail with respect to individual Compositions and sources as is customarily furnished by the Buyer to writers and other publishers for whom the Buyer furnishes management services and shall be accompanied by a computation, in the form of a reconciliation to such statement, of Publisher's Receipts for such semi-annual period. Amounts previously paid to the Seller under Section 4.4.1 hereof with respect to its share of Publisher's Receipts for such semi-annual period shall be credited against the amounts to be remitted with such statement.

4.4.3 Arrangements for Certain Direct Payments. Anything in this Agreement to the contrary notwithstanding, some of the amounts to be paid to the Seller pursuant to Section 11.9 hereof with respect to amounts to be received from The Harry Fox

Agency, Inc. (the "Fox Agency") or any other mechanical rights collection agency which may handle mechanical rights for the Buyer in the United States and Canada, BMI and ASCAP shall be paid to the Seller in accordance with the provisions of this Section 4.4.3, as follows:

4.4.3.1 Letters of Instruction. At the Closing the Seller and the Buyer shall execute, and promptly following the Closing the Seller shall deliver to BMI and ASCAP, irrevocable letters of instruction in the form of Exhibits E and F annexed hereto, instructing each of BMI and ASCAP to pay directly to the Seller 25% of amounts payable by each of them with respect to the Rights. The Seller shall simultaneously execute and deliver to the Fox Agency an irrevocable letter of instruction in the form of Exhibit G annexed hereto, instructing the Fox Agency to pay directly to the Seller 10% of amounts payable by the Fox Agency with respect to the Rights. If the Buyer should in the future engage any other collection agency to collect mechanical royalties relating to the Compositions in the United States and Canada, it shall deliver similar instructions to such agency. Each such letter of instruction shall instruct the addressee to forward to the Buyer a copy of each statement accompanying payments made to the Seller with respect to the Compositions.

4.4.3.2 Inclusion of Direct Payments in Publisher's Receipts. For purposes of Section 4.5 hereof, all amounts paid directly to the Seller pursuant to the letters of instruction required by Section 4.4.3.1 hereof shall be included in Gross Receipts (as hereinafter defined) to the extent such amounts would have been so included if paid directly to the Buyer. Such amounts shall be deemed to be so included in Gross Receipts on the date received by the Seller and shall be deemed to have been remitted by the Buyer to the Seller on such date as an advance against payments to be made pursuant to Sections 4.4.1 and 4.4.2 hereof with respect to the semi-annual period in which they are received by the Seller.

4.4.3.3 Adjustments with Respect To Direct Payments. If the amounts paid directly to the Seller pursuant to the letters of instruction required by Section 4.4.3.1 hereof during any semi-annual period for which a statement is rendered by the Buyer to the Seller pursuant to Section 4.4.2 hereof shall exceed that portion to which the Seller is entitled pursuant to Section 11.9 hereof of all amounts paid by the addressees under such letters of instruction to the Seller and the Buyer during such period, then the Seller shall pay to the Buyer the amount of such excess promptly following receipt by the Seller of such semi-annual statement or, alternatively, the Buyer may deduct the amount of such excess from the payment being made by it with respect to such semi-annual statement. If the amounts paid directly to the Seller pursuant to the letters of instruction required by Section 4.4.3.1 hereof during any semi-annual period for which a statement is rendered by the Buyer to the Seller pursuant to Section 4.4.2 hereof shall be less than that portion to which the Seller is entitled pursuant to Section 11.9 hereof of all amounts paid by the addressees of such letters of instruction to the Seller and the Buyer during such period, then the Buyer shall pay to the Seller the amount of such difference simultaneously with the rendering to the Seller of such semi-annual statement. Each semi-annual statement delivered to the Seller pursuant to Section 4.4.2 hereof shall set forth a separate, detailed computation of any adjustment required by this Section 4.4.3.3.

4.4.4 Blocked Payments. If by reason of forces beyond the control of the Buyer or any of its affiliates any payments due from third parties in countries outside the United States which would be includable in Gross Receipts if paid shall be blocked so that they cannot be remitted to the United States in dollars, then the Buyer shall, if requested by the Seller and if the laws of the country involved permit, direct such third party to pay the share of such payments to which the Seller is entitled into a bank account in the country in which the third party is located in the name of the Seller or its designee. Upon any such payment, the amount of such payment plus the corresponding share of Publisher's Receipts to which the Buyer is entitled shall be included in Gross Receipts, and the Buyer shall be deemed to have made payment to the Seller of the amounts so deposited, all at the exchange rate existing on the date of deposit. In the absence of such action, such blocked amounts shall not be included in Gross Receipts until they become remittable to the United States in United States dollars or are expended for the account of the Seller or the Buyer. The Buyer shall notify the Seller of the amount and source of any blocked payments and supply all information which the Buyer may have regarding the cause of the blocked payment. The Buyer shall not be liable for the failure by any such third party to comply with the Buyer's instructions.

4.4.5 Currency; Exchange Rates. The payments to be made to the Seller pursuant to Sections 4.4.1 and 4.4.2 hereof shall be made in United States dollars in current New York funds. Gross Receipts received by the Buyer or any of its affiliates in currencies other than United States dollars shall be converted to United States dollars at the rate of exchange used in conversion of such amounts when actually remitted to the United States. If at the time a semi-annual statement is rendered hereunder reporting such sums that have not actually been remitted to the United States in United States dollars, such receipts shall be translated into United States dollars using exchange rates in effect on the fifth business day preceding the date upon which such statement is rendered or due (whichever is earlier).

4.5 Publisher's Receipts. As used in this Agreement, the term "Publisher's Receipts" means all gross receipts after June 30, 1975 (including receipts during the Interim Period as defined in Section 11.1 hereof), received by or for the account of the Buyer (or, except for monies which under the provisions of this Agreement are the property of the Seller or the Merging Corporations, by or for the account of the Seller or the Merging Corporations) with respect to the Rights, and including but not limited to receipts with respect to the Rights from sub-publishers in countries throughout the world outside the United States, whether as advances, royalties or otherwise, and all proceeds from the exercise of printed, publication, mechanical, motion picture and television synchronization and small performing rights and all other rights included in the Rights (the "Gross Receipts"), adjusted pursuant to this Section 4.5 and without deduction, set-off or allowance of any nature whatsoever except as specifically provided in this Section 4.5. Anything in the preceding sentence to the contrary notwithstanding, monies to be included in Gross Receipts shall be included as of the date the monies are received by the Buyer, except as provided in Section 4.4 and except that, if the monies are due the Buyer from any affiliated sub-publisher who delays remittance to the Buyer by not transmitting said monies in a manner conforming to its normal business and accounting practices, then, in such event, the monies shall be deemed to be included in Gross Receipts on the date the Buyer would in the ordinary course of business have received said monies from such affiliated sub-publisher. The following shall be applicable in determining Publisher's Receipts:

4.5.1 Payments to Third Parties. There shall be subtracted from Gross Receipts any amounts paid therefrom by the Buyer (or, during the Interim Period, by the Seller or any of the Merging Corporations), or properly accrued as payable therefrom, to writers of the Compositions and other third parties having an interest in the Rights in accordance with contracts and agreements relating to the Rights as in effect on the Closing Date.

4.5.2 Foreign Royalties. With respect to the territory of the world outside the United States and Canada, Gross Receipts shall include 100% of the gross amount received by or for the account of the Buyer (or, during the Interim Period, by or for the account of the Seller or any of the Merging Corporations) from sub-publishers and others after deduction therefrom of royalties and other sums payable to writers and other third parties as aforesaid but without other deduction, set-off or allowance of any nature whatsoever. The Buyer agrees that (i) fees to sub-publishers provided for in contracts, agreements and licenses in effect on the Closing Date shall not be increased during the duration thereof and (ii) such fees as may be provided for in contracts, agreements and licenses with sub-publishers in any country outside the United States and Canada which may (subject to Section 10 hereof) be entered into following the Closing Date, shall be no higher than those at the time generally prevailing in the industry in the country involved with respect to similar compositions and catalogues. In computing amounts to be included in Gross Receipts from foreign sources, the Buyer shall deduct the amount of any non-United States taxes required to be withheld or paid with respect to transmission of such amounts to the Buyer in the United States in United States dollars; provided that if the aggregate amount of such taxes deducted shall increase to the point where they aggregate $40,000 or more on an annual basis, the parties shall discuss in good faith amendment of this provision to permit the Seller to participate on an equitable basis in any United States tax benefits which the Buyer may actually realize as a result of payment of such foreign taxes.

4.5.3 Accrued Income. There shall be excluded from Gross Receipts (i) all amounts received, whenever received, as a result of any audit of, or with respect to, the Rights, including, without limitation, any audit conducted by the Fox Agency, relating to amounts earned from or applicable or relating to performances or sales utilizing the Rights and occurring on or prior to June 30, 1975; (ii) all amounts received, whenever received, which are due or hereafter becoming due on or prior to June 30, 1976, or which in the ordinary course of business would have been paid or become due on or prior to such date, from any affiliate of the Buyer earned from or applicable or relating to performances or sales utilizing the Rights and occurring on or prior to June 30, 1975; and (iii) all other amounts, if and to the extent actually received by or for the account of the Buyer on or prior to June 30, 1976, earned from or applicable or relating to performances or sales utilizing any of the Rights and occurring on or prior to June 30, 1975. All of the foregoing excluded amounts shall be and remain the separate property of the Seller. To the extent such amounts shall be received by the Buyer, the Buyer shall deduct there-from the amount of all payments required to be made to third parties relating thereto and shall promptly remit the balance of such amounts to the Seller. To the extent such amounts may be received by the Seller, the Seller shall bear the expense of all payments to third parties relating thereto. The Seller shall promptly notify the Buyer of the amount and source of any such receipts by it. The Buyer shall compute the amounts due to third parties with respect to all such amounts received by the Buyer or the Seller. The Seller shall immediately following request by the Buyer pay to the Buyer the amounts so payable with respect to such amounts received by the Seller. The Buyer shall make such payments to third parties as required by Section 10.1 hereof. The provisions of Sections 11.7 and 11.10 hereof shall apply in allocating certain receipts for purposes of this Section 4.5.3.

4.5.4 No Withholding. No amount otherwise includable in Gross Receipts shall be excluded therefrom as a result of any claim by any third party alleging that the Buyer and the Seller are not entitled to such amounts or any other claim against the Compositions.

4.5.5 Amounts Withheld by Third Parties. If any third party shall withhold any payment due the Buyer, which, if paid, would in whole or in part be includable in Gross Receipts, because of a claim against, or dispute with, the Buyer which is unrelated to the Rights, such payment, for purposes of computing Gross Receipts and Publisher's Receipts, shall be deemed received by Buyer on the date it would have been due in the absence of such claim or dispute.

4.5.6 Robbins and BMI Agreements. All amounts paid under certain contracts and agreements to be assigned hereunder to the Buyer which cover both the Rights and the Aberbach Rights (as defined in Section 11.7 hereof), including but not limited to the Robbins Agreement and the BMI Agreement (as hereinafter defined), less any amounts payable to the Aberbach Corporations (as defined in Section 11.7 hereof) pursuant to Section 11.7 hereof, shall be included in Gross Receipts. As used in this Agreement the term "Robbins Agreement" means the Agreement dated June 15, 1970, among Robbins, the Seller and the Aberbachs and any renewals or extensions thereof and the BMI Agreement means the Agreement dated February 17, 1972, between BMI and the Seller, as amended by the letter agreement dated June 25, 1975, among BMI, the Seller and certain of the Aberbach Corporations, and any amendments, renewals or extensions thereof.

4.5.7 Presley Administration Fee. The 5% management fee payable to the Seller pursuant to Paragraph 4 of the Presley Management Agreement shall be assigned to the Buyer and shall not be included in Gross Receipts, and such fee shall be and remain the separate property of the Buyer to be retained by it for its own account in consideration of the performance by the Buyer, as assignee, of the Seller's obligations thereunder. The Seller shall execute and deliver to the Buyer at the Closing an executed assignment of the Presley Management Agreement in the form of Exhibit H annexed hereto.

4.5.8 Receipts against Advances Made through Closing. The Seller shall advise the Buyer of all unrecouped advances ("Prior Advances") against royalties made by the Seller or any of the Merging Corporations through the Closing Date. The amounts which would otherwise be paid to third parties after the Closing but for the Prior Advances shall be added to and be considered as Publisher's Receipts. Advances made after December 31, 1974, to the writers listed on Schedule IV delivered to the Buyer shall be included in the Nashville Expenses as defined in Section 11.1 hereof which are to be reimbursed by the Buyer to the Seller. Any amounts retained by the Buyer as recoupment of such advances shall be the sole property of the Buyer, shall not be included in Gross Receipts and shall for all other purposes be considered Future Advances.

4.5.9 Advances after Closing. Any advances made by the Buyer after the Closing Date to any writer or to any other third party ("Future Advances") shall be made by the Buyer from its separate funds, and Future Advances shall not, directly or indirectly, be charged to the Seller to any extent whatsoever nor deducted in computing Publisher's Receipts. Recoupment of Future Advances shall belong entirely to the Buyer and shall not be included in Gross Receipts. The Seller represents that there are no commitments to make any Future Advances except as listed on Schedule V delivered to the Buyer. Any amounts received after the Closing which can be applied to recoupment of advances made to any person who has received both Prior Advances and Future Advances shall be applied to recoupment of Prior Advances pursuant to Section 4.5.8 hereof until they have been fully recouped prior to application of any such receipts to recoupment of Future Advances pursuant to this Section 4.5.9.

4.5.10 Additional Rights. Schedule IV delivered to the Buyer identifies all contracts and agreements between the Seller and those writers who are actively engaged in writing or composing music or lyrics. There shall be included in Gross Receipts, without deduction, set-off or allowance or any nature whatsoever not specifically permitted pursuant to the provisions of this Section 4.5, any amounts received by the Buyer on or with respect to any future copyrights, rights of exploitation or other rights in musical compositions for which the lyrics or music shall be written or composed by such writers, whether pursuant to any of such contracts or agreements, or any extensions or renewals thereof, or otherwise, to the same extent as if such copyrights or other rights had been included in the Rights sold hereunder to the Buyer.

4.5.11 Cut-Ins. If the Buyer consents or agrees to the payment to, or participation by, any person other than the Buyer and the Seller in any amount of publisher's share with respect to the Rights, the amount of any such payment or participation shall not, unless the Seller shall otherwise consent in writing, be deducted from Gross Receipts in determining Publisher's Receipts.

5. Closing. The Closing of the purchase and sale of the Rights shall take place at the offices of Paul, Weiss, Rifkind, Wharton & Garrison, 345 Park Avenue, New York, New York, at 10 A.M. local time on a date to be mutually agreed upon by the Buyer and the Seller. The Buyer and the Seller shall use their best efforts to arrange for the Closing at the earliest possible date. The date upon which the Closing shall take place is referred to herein as the "Closing Date." Either the Seller or the Buyer may terminate this Agreement if the Closing shall not have occurred without fault attributable to it on or before August 31, 1975.

6. Representations and Warranties of the Seller. The Seller represents and warrants to the Buyer and the Guarantor as follows:

6.1 Organization and Authority. The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby. The execution and delivery of this Agreement by the Seller and the consummation and performance by it of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate and other proceedings, and this Agreement constitutes the valid obligation of the Seller legally binding upon it in accordance with its terms. The execution and delivery of this Agreement by the Seller and the consummation and performance by it of the transactions contemplated hereby will not conflict with or result in the breach or violation of any term or provision of, or constitute a default under, the Certificate of Incorporation or By-laws of the Seller, any indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Seller is a party or by which it is bound, or any order, writ, injunction or decree of any court or any governmental agency or body; provided that no representation is made herein as to the effect of this Agreement or its consummation or performance on any of the Rights, or any contracts or agreements being transferred to or assumed by the Buyer hereunder.

6.2 Interest in the Rights. The Seller has no knowledge of any document or instrument whatsoever materially relevant to a determination of the nature and extent of the right, title, interest and benefit of the Seller and the Merging Corporations in the Rights other than those documents and instruments the originals or copies of which have been made available to the Buyer for its inspection at the offices of the Seller. Except as specifically provided in this Section 6.2, the Seller makes no representation or warranty whatsoever as to the Rights, the right, title, interest or benefit therein of the Seller or any of the Merging Corporations or the right, title, interest or benefit therein to be transferred hereunder to the Buyer, and the Buyer acknowledges that no such other representation or warranty has been made to it. The Seller is not aware of any material adverse claim, threatened tax or other lien affecting or which might affect the Compositions or the Rights other than as disclosed in Schedule VI delivered to the Buyer. None of the Seller's right, title, interest or benefit in the Compositions or Rights is subject to any pledge, mortgage, hypothecation or other lien. Neither the Seller nor the Merging Corporations have, since July 1, 1969, sold or otherwise transferred any interest in any Compositions listed on Schedule VII delivered to the Buyer. Any sales or transfers by the Seller and the Merging Corporations since July 1, 1969, of any rights in any other Compositions which were the source of any proceeds included in computation of the Base Amount (the "Base Amount Compositions") did not in the aggregate have any material adverse effect on the Rights being transferred to Buyer.

If less than all of the Rights relating to the Base Amount Compositions are transferred and assigned to the Buyer as contemplated by this Agreement then, unless adjustment with respect to such failure is made pursuant to Section 11.8 hereof the Base Amount shall be reduced in accordance with the formula set forth in Section 10.2 hereof with regard to the Rights not so transferred or assigned.

6.3 Conduct of Business in Ordinary Course. Since June 30, 1974, the Seller and the Merging Corporations have conducted, and will through the Closing Date continue to conduct, their business relating to the Rights in the ordinary course and in conformity with their normal business practices followed prior to June 30, 1974. Since June 30, 1974, the Seller and the Merging Corporations have maintained their books, accounts and records with respect to the Rights in the usual, regular and ordinary manner, on a basis consistent with prior years, and insofar as the Rights are concerned have complied with all laws applicable and material to them and to the conduct of their business, and have performed all of their material obligations without default. Since June 30, 1974, the Seller has complied in all material respects with the obligations imposed upon it by all of its contracts and agreements now in existence, and has not permitted any options to extend the terms of any material contract or commitment to lapse or expire.

6.4 Brokerage. No broker, finder or similar agent has been employed by or on behalf of the Seller, and no person or entity as a result of any dealings or communication of any kind with the Seller is entitled to any brokerage commission, finder's fee or any similar compensation, in connection with this Agreement or the transactions contemplated hereby.

6.5 Representations and Warranties on Closing Date. The representations and warranties made in this Section 6 will be true and correct on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date. All representations and warranties made by the Seller shall survive the Closing Date and any investigation made by or on behalf of the Buyer.

6.6 Material Misstatements or Omissions. No representation or warranty by the Seller in this Agreement, nor any documentation, statement, certificate or exhibit furnished or to be furnished to the Buyer pursuant hereto, or in connection with the transactions contemplated hereby contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements contained therein not misleading.

7. Representations and Warranties of the Buyer and Guarantor. The Buyer and the Guarantor, jointly and severally, represent and warrant to the Seller as follows:

7.1 The Buyer: Organization, Authority and Compliance. The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby. The execution and delivery of this Agreement by the Buyer and the consummation and performance by it of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate and other proceedings, and this Agreement constitutes the valid obligation of the Buyer legally binding upon it in accordance with its terms. The execution and delivery of this Agreement by the Buyer and the consummation and performance by it of the transactions contemplated hereby will not conflict with or result in the breach or violation of any term or provision, or constitute a default under, the Certificate of Incorporation or By-laws of the Buyer, any indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Buyer or any of its affiliates (including the Guarantor) is a party or by which it or any such affiliate is bound, or any order, writ, injunction or decree of any court or any governmental agency or body.

7.2 The Guarantor: Organization, Authority and Compliance. Polygram GmbH is a Gesellschaft mit beschraenkter Haftung duly organised, validly existing and in good standing under the laws of the Federal Republic of Germany and has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby. Polygram B.V. is a Besloten Vennootschap duly organized, validly existing and in good standing under the laws of the Netherlands and has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby. The execution and delivery of this Agreement by the Guarantor and the consummation and performance by it of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate and other proceedings, and this Agreement constitutes the valid obligation of the Guarantor legally binding upon it in accordance with its terms. The execution and delivery of this Agreement by the Guarantor and the consummation and performance by it of the transactions contemplated hereby will not conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Guarantor or any of its affiliates (including the Buyer) is a party or by which it or any such affiliate is bound, or any order, writ, injunction or decree of any court or any governmental agency or body.

7.3 Governmental Compliance. The execution and delivery of this Agreement by the Buyer and by the Guarantor and the consummation and performance by them of the transactions contemplated hereby will not conflict with or result in the breach or violation of any Federal Republic of Germany or Netherlands federal, state, county, local or other governmental statute or ordinance, or any rule or regulation of any Federal Republic of Germany or Netherlands federal, state, county, local or other governmental agency or body, and no approval or consent of any such foreign, federal, state, county, local or other governmental agency or body is required in connection with the execution and delivery of this Agreement by the Buyer or by the Guarantor or the consummation and performance of the transactions contemplated hereby.

7.4 Brokerage. No broker, finder or similar agent has been employed by or on behalf of the Buyer or the Guarantor, and no person or entity as a result of any dealings or communications of any kind with the Buyer or the Guarantor is entitled to any brokerage commission, finder's fee or any similar compensation, in connection with this Agreement or the transactions contemplated hereby.

7.5 Representations and Warranties on Closing Date. The representations and warranties made in this Section 7 will be true and correct on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date. All representations and warranties made by the Buyer and the Guarantor shall survive the Closing Date and any investigation made by or on behalf of the Seller.

7.6 Material Misstatements or Omissions. No representation or warranty by the Buyer or the Guarantor in this Agreement, nor any documentation, statement, certificate or exhibit furnished or to be furnished to the Seller pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements contained therein not misleading.

8. Conditions Precedent to the Seller's Obligation to Close. The Seller's obligation to enter into and complete the Closing provided for in Section 5 hereof is subject, at its option, to the fulfillment at or prior to the Closing Date of each of the following conditions, any one or more of which may be waived by it:

8.1 Representations and Warranties True. The representations and warranties of the Buyer and the Guarantor contained in this Agreement shall be true and correct in all respects on and as of the Closing Date as if made on and as of the Closing Date, and the Buyer and the Guarantor shall each have delivered to the Seller a certificate to such effect dated the Closing Date and signed by the President of the Buyer and an authorized signatory of each entity comprising the Guarantor.

8.2 Compliance with Covenants. The Buyer shall have performed and complied with all the terms, agreements, covenants and conditions of this Agreement to be performed or complied with by it at or prior to the Closing Date, and the Buyer shall have delivered to the Seller a certificate to such effect dated the Closing Date and signed by the President of the Buyer.

8.3 Opinion of Counsel to the Buyer. The Seller shall have received the opinion, dated the Closing Date and addressed to the Seller, of Arnold I. Rich, Esq., counsel to the Buyer (which opinion may be based upon the opinion of foreign counsel, satisfactory to the Seller, as to matters referred to in clauses (iv), (v) and (vi) of this Section 8.3 and in clause (vii) of this Section 8.3 insofar as such clause (vii) relates to the Guarantor), to the effect that:

(i) the Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby;

(ii) the execution and delivery of this Agreement by the Buyer and the consummation and performance by it of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate and other proceedings, and this Agreement constitutes the valid obligation of the Buyer legally binding upon it in accordance with its terms;

(iii) the execution and delivery of this Agreement by the Buyer and the consummation and performance by it of the transactions contemplated hereby will not conflict with or result in the breach or violation of any term or provision of, or constitute a default under, the Certificate of Incorporation or By-laws of the Buyer, or, to the best knowledge of such counsel, any indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Buyer or any of its affiliates is a party or by which it or any such affiliate is bound, or any order, writ, injunction or decree of any court or any governmental agency or body;

(iv) Polygram GmbH is a Gesellschaft mit beschraenkter Haftung duly organized, validly existing and in good standing under the laws of the Federal Republic of Germany and has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby; Polygram B.V. is a Besloten Vennootschap duly organized, validly existing and in good standing under the laws of the Netherlands and has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby;

(v) the execution and delivery of this Agreement by the Guarantor and the consummation and performance by it of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate and other proceedings, and this Agreement constitutes the valid obligation of the Guarantor legally binding upon it in accordance with its terms;

(vi) to the best knowledge of counsel, the execution and delivery of this Agreement by the Guarantor and the consummation and performance by it of the transactions contemplated hereby will not conflict with or result in the breach or violation of any term or provision of, or constitute a default under any indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Guarantor or any of its affiliates is a party or by which it or any such affiliate is bound, or any order, writ, injunction or decree of any court or any governmental agency or body; and

(vii) the execution and delivery of this Agreement by the Guarantor and the consummation and performance of the transactions contemplated hereby will not conflict with or result in the breach or violation of federal or New York State or Delaware law or of any statute, rule or regulation of the Federal Republic of Germany or the Netherlands or any agency or body or subdivision and thereof, and no approval or consent of any such foreign government or agency or body is required in connection with the execution and delivery of this Agreement by the Buyer or by the Guarantor, and the consummation and performance of the transactions contemplated hereby.

8.4 Litigation. No action, suit or proceeding shall have been instituted before a court or governmental body, or instituted or threatened by any governmental agency or body, to restrain or prevent the carrying out of the transactions contemplated hereby.

8.5 Other Proceedings Satisfactory. All other proceedings in connection with the transactions contemplated hereby, and all documents and instruments incident to such transactions, shall be reasonably satisfactory in form and substance to the Seller, and the Seller shall have received all such certified or other copies of such documents as it reasonably requests.

9. Conditions Precedent to the Buyer's Obligation to Close. The Buyer's obligation to enter into and complete the Closing provided for in Section 5 hereof is subject, at its option, to the fulfillment at or prior to the Closing Date of each of the following conditions, any one or more of which may be waived by it:

9.1 Representations and Warranties True. The representations and warranties of the Seller contained in this Agreement shall be true and correct in all respects on and as of the Closing Date as if made on and as of the Closing Date, and the Seller shall have delivered to the Buyer a certificate to such effect dated the Closing Date and signed by the President or any Vice President of the Seller.

9.2 Compliance with Covenants. The Seller shall have performed and complied with all the terms, covenants, agreements and conditions of this Agreement to be performed or complied with by it at or prior to the Closing Date, and the Seller shall have delivered to the Buyer a certificate to such effect dated the Closing Date and signed by the President or any Vice President of the Seller.

9.3 Opinion of Counsel to the Seller. The Buyer shall have received the opinion, dated the Closing Date and addressed to the Buyer, of Paul, Weiss, Rifkind, Wharton & Garrison, counsel to the Seller, to the effect that:

(i) the Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby;

(ii) the execution and delivery of this Agreement by the Seller and the consummation and performance by it of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate and other proceedings, and this Agreement constitutes the valid obligation of the Seller legally binding upon it in accordance with its terms; and

(iii) the execution and delivery of this Agreement by the Seller and the consummation and performance by it of the transactions contemplated hereby will not conflict with or result in the breach or violation of any term or provision of, or constitute a default under, the Certificate of Incorporation or the By-laws of the Seller, or, to the knowledge of such counsel, any indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Seller is a party or by which it is bound, or, to the knowledge of such counsel, any order, writ, injunction or decree of any court or any governmental agency or body (provided that there may be excluded from the coverage of such opinion any effect of this Agreement or its consummation or performance on any of the Rights or any contracts or agreements being transferred to or assumed by the Buyer).

9.4 Litigation. No action, suit, or proceeding shall have been instituted before a court or governmental body, or instituted or threatened by any governmental agency or body, to restrain or prevent the carrying out of the transactions contemplated hereby.

9.5 Other Proceedings Satisfactory. All other proceedings in connection with the transactions contemplated hereby, and all documents and instruments incident to such transactions, shall be reasonably satisfactory in form and substance to the Buyer, and the Buyer shall have received all such certified or other copies of such documents as it reasonably requests.

10. Management of the Rights. At all times following the Closing and during the life of any of the Rights, the parties agree that the Buyer shall exclusively administer the Rights as the Buyer in its sole business judgment deems appropriate, subject to all of the terms and conditions of this Agreement, including but not limited to the terms and conditions of this Section 10. The parties agree as follows:

10.1 Management Services in General. The Buyer shall exclusively manage, administer, promote, exploit and arrange for the licensing of the Rights (the "Management Services"). The Buyer in its sole business judgment shall perform those duties and responsibilities normally performed by a music publisher with respect to a catalogue containing compositions comparable to the Compositions acquired hereunder, including but not limited to (i) publishing or causing the publication of printed copies of the Compositions, including sheet music, folios, albums and orchestrations, but only to the extent the Buyer is not limited by the provisions of the Robbins Agreement; (ii) licensing, and making arrangements for the issuance of licenses for, all rights to use the Compositions, including mechanical recording, synchronization and electrical transcription and performing rights, and any other uses, whether now known or hereafter discovered; (iii) collecting any and all licensing fees, performance fees, royalty payments and any other payments, domestic or foreign, with respect to the Compositions that may be due to it (or, pursuant to Section 4.5.3 hereof, to the Seller), or to the writers of the Compositions (other than any writer's share of performance fees which may be payable directly to third parties by performing rights societies) or to other third parties; (iv) making arrangements for the proper distribution of all monies that may be due with respect to the Rights to the Buyer or the Seller (including, without limitation, monies which may be due to the Seller pursuant to Section 4.5.3 hereof) or the writers of the Compositions or to other third parties. Payments due to writers of the Compositions and to other third parties not otherwise paid directly to such persons by third parties shall be paid directly to such persons by the Buyer; provided that if any such amounts due to third parties with respect to receipts of the Seller during the Interim Period shall become due after the Closing but prior to the settlement between the Buyer and the Seller with respect to the Interim Period pursuant to Section 11 hereof, the Seller shall deliver to the Buyer all statements with respect thereto and pay to the Buyer the amount of such payments promptly following receipt of notice from the Buyer of the amount thereof and such payment shall be appropriately reflected in the settlement of the Interim Period.

10.2 Preservation of Rights. The Buyer shall exercise reasonable care in accord with sound business practices customary in the industry to preserve and protect the rights and interests in the Rights sold to it hereunder and, without limiting the generality of the foregoing, shall take all reasonable and customary action to prevent any of the Compositions from falling into the public domain in the United States